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Our Case No. 659/1715

K-C Ref. No. 19441

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
David A. Fell et al.)	
)	Examiner Michael G. Bogart
Serial No. 10/732,913)	
)	Group Art Unit No. 3761
Filing Date: December 10, 2003)	
)	Conf. No.: 6819
For FOLD LINE RESISTANT)	
ABSORBENT ARTICLES)	
)	
)	

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal is in response to the Final Rejection dated September 27, 2007 and the Notice of Appeal dated December 27, 2007.

I. REAL PARTY IN INTEREST

It is believed that Kimberly-Clark Worldwide, Inc. is the real party of interest in this Appeal pursuant to the assignment of the above-identified application to Kimberly-Clark Worldwide, Inc. executed by each of the inventors of record, David A. Fell, Paige Dellerman, and James R. Bath.

II. RELATED APPEALS AND INTERFERENCES

The undersigned, Amanda M. Miller, is not aware of any other appeals, interferences, or other judicial proceedings that may be related to, would directly affect or be directly affected or have a bearing on the Board's decision in the pending Appeal.

III. STATUS OF CLAIMS

The status of the claims is as follows:

Claims 10-13 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,886,513 (hereinafter "Mason") in view of U.S. Patent No. 6,015,934 (hereinafter "Lee").

Claims 10-13 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application No. 2003/0114805 (hereinafter "Rainville-Lonn") in view of Lee.

Claims 14 and 16-21 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Rainville-Lonn and Lee as applied to claims 10-13, and further in view of Mason.

Claims 15 and 22-24 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Rainville-Lonn, Lee, and Mason as applied to claims 14 and 16-21, and further in view of U.S. Patent No. 6,429,350 (hereinafter "Tanzer").

Claims 1-9 and 25-35 have been cancelled.

The above mentioned rejections of claims 10-24 are the subject of this Appeal.

IV. STATUS OF AMENDMENTS

An amendment was filed on June 28, 2007. A final office action was issued on September 27, 2007, entering the previously filed amendments. The status of the claims remains unchanged from those finally rejected on September 27, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

An understanding of claims 10-24 can be made upon a review of the embodiments of the invention, described below, and illustrated in the figures of the specification. Note that in the description to follow, like elements will employ identical identification numerals.

An absorbent article that resists permanent creasing includes a packaging component, such as a pouch, and an absorbent article that is resistant to creasing. (page 6, ll. 23-25). The term "packaging component" refers to the portion of the system that encases the absorbent article to protect it from being soiled before use. (page 6, ll. 25-27). The packaging component is desirably a water impermeable material, such as a polypropylene film or nonwoven. An absorbent article can be commercially folded and placed in a pouch using a folder, wrapper, and sealing unit. (page 6, ll. 27-32).

The absorbent article (FIG. 1) is independently movable from a folded position to an unfolded position. (page 7, ll. 1-2). The absorbent article may include an absorbent core comprising an activating member and at least first and second portions each defining a body side surface. (p. 8, ll. 3-5). The absorbent core provides an absorbent structure that is configured for holding and storing absorbed liquids and other waste materials. (page 9, ll. 20-21). The absorbent core has an unfolded thickness of no more than 8 mm and includes a foam layer and a layer containing superabsorbent. (page 3, ll. 3-5). The absorbent core can be comprised of at least two discrete absorbent components: the body side absorbent and the garment side absorbent. The absorbent core may also have only one component or can have more than two components (page 9, ll. 25-28). The body side absorbent layer, or the activating member, is desirably a resilient crease resistant material, such as open cell foam materials. (page 10, ll. 7-8). The garment side absorbent layer may be comprised of any material that will absorb bodily exudates, such as superabsorbent materials. (page 9, ll. 29-30).

The absorbent article may include a first portion which may be folded so that its body side surface is substantially parallel to the body side surface of a second portion. Likewise, when the absorbent article is tri-folded, the body-side surface of a third portion may be moved so that it is substantially parallel to the body side surface of the second portion. (page 10, l. 27 – page 11, l. 3). The present invention should not be limited to this manner of folding. (See FIGS. 4-6).

When either the absorbent article is allowed to unfold, it will have at least one angle α and if tri-folded, two angles α and β that are formed between the first and second bodyside surfaces and second and third body side surfaces of the portions of the absorbent article. (page 11, ll. 4-9).

As used in the present application, an obtuse angle is an angle that is greater than 90° and less than 180° . An acute angle is an angle that is less than 90° . The article has at least a first and second portion that forms a 90° or an obtuse angle α when they are allowed to unfold and stabilize. The conventional absorbent article, as shown in FIG. 6, has at least a first and second portion that forms an acute angle ψ when unfolded and allowed to stabilize. (page 11, ll. 12-18).

The absorbent article is independently movable from a folded condition, wherein said body side surfaces of said first and second portions face each other in a substantially parallel relationship (page 16, ll. 14-17) under an applied pressure applied to said first and second portions (page 16, ll. 18-20), to an unfolded condition wherein no pressure is applied to said first and second portions (page 17, ll. 10-11); wherein said body-side surfaces of said first and second portions form at least one angle greater than or equal to about 90 - 130° in said unfolded condition (page 18, ll. 6-10) when said absorbent core is positioned and maintained in said folded condition under 2800 psi of said applied pressure for about 5 seconds at 21°C and then is released to said unfolded condition for about 20 seconds (page 16, l. 18 – page 17, l. 1 and l. 17); and wherein said absorbent core, when subjected to said folded condition and released to said

unfolded condition, resists permanent creasing (page 18, ll. 6-10). (See Table 3, page 18).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

There are four grounds of rejection presented for review:

- 1) the rejection of claims 10-13 as being obvious in view of Mason and Lee;
- 2) the rejection of claims 10-13 as being obvious in view of Rainville-Lonn and Lee;
- 3) the rejection of claims 14 and 16-21 as being obvious in view of Rainville-Lonn, Lee and Mason; and
- 4) the rejection of claims 15 and 22-24 as being obvious in view of Rainville-Lonn, Lee, Mason, and Tanzer.

VII. ARGUMENT

A. Claims 10-13 are not obvious in view of *Mason et al.* and *Lee et al.*

Claims 10-13 have been finally rejected under 35 U.S.C. § 103, as being obvious in view of *Mason et al.* (US 4,886,513) in combination with *Lee et al.* (US 6,015,934). (Final Office Action, dated September 27, 2007). Appellants request that this rejection be reversed.

Appellants claim an absorbent article that resists creasing, even after having been packaged in a double or tri-folded configuration. Previous articles have either been 1) resistant to deformation during wearing (*Mason et al.*), or 2) folded in an individually wrapped pouch (*Lee et al.*), but the references cited do not disclose an absorbent article with an absorbent core that is resistant to creasing, even after having been subjected to the pressure of a folding machine (approximately 2800 psi).

Mason et al. teaches the use of a “flexibly stiff, springy, substantially nonelastic reinforcing member that extends generally around the periphery of the pad.” (col. 3, ll. 10-13). The pad resists bunching and twisting and if bunching and twisting takes place, they are able to return to the desired shape because of the reinforcing member. (col. 2, ll. 64-67). It would not have been obvious to one of skill in the art to use the reinforcing member disclosed in *Mason* with the claimed invention. First, the reinforcing member is directed to maintaining the overall shape of a pad and is desirably located in the crotch section of the pad, where shape retention is most desired. Moreover, positioning the reinforcing member in the crotch region of the pad minimizes any stiffness in the ends of the pads. (col. 3, ll. 40-46). Conversely, as shown in FIG. 3, the first absorbent layer or the “activating member” is not positioned only in the “crotch region” of the absorbent article, as defined in Appellants specification (p. 5, ll. 24-29). Certainly, if the activating member were positioned only in the crotch region of the absorbent article, the article, when double or triple folded and inserted into a packaging component may not be resistant to creases at all of the fold line areas. *Mason* discloses materials such as spring wire, plastic-coated spring steel wire, and mid-density polyethylene members. (col. 5, l. 67 – col. 6, l. 2). One of skill in the art would not have used such materials to form a crease resistant absorbent article. Such materials would hold a permanent crease when subjected to 2800 psi of folded pressure.

Moreover, *Mason* does not teach or suggest the use of a packaging component with the use of an absorbent article. It would not have been obvious to one of skill in the art to fold the pad of *Mason* and insert it into an individual packaging component because it may have irreparably damages the “stiff, springy, shape-retaining, and substantially-nonelastic” properties of the disclosed reinforcing member. (col. 5, ll. 60-65).

The conclusory statements presented regarding obvious design choices of one skilled in the art are insufficient to establish a *prima facie* case of obviousness. MPEP 2143.01 states that, with reference to *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993):

A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is **not sufficient** to establish a *prima facie* case of obviousness without some **objective reason to combine** the teachings of the references. [Bold emphasis added]

The Examiner has not yet provided any evidence of a motivation or suggestion to modify the Mason or Lee references, either from statements within the references or from other documentary evidence on the record. Thus, the conclusory statement of obviousness “to one of ordinary skill in the art” would be insufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103.

Indeed *Mason* teaches a pad that resists bending and twisting when in use, generally in the longitudinal direction. (col. 2, l. 63 – col. 3, l. 2). Therefore, in view of the current amendments, test data discussed below, and the foregoing remarks, Appellants respectfully request the Examiner to withdraw the instant rejection.

The additional reference cited by the Examiner, *Lee et al.*, teaches nothing that would remedy the deficiencies of *Mason et al.* The mere fact that the combination of references teaches every element of the claimed invention, without motivation to combine, is insufficient to establish a *prima facie* case of obviousness. MPEP 2143.01, with reference to *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

B. Claims 10-13 are not rendered obvious by Rainville-Lonn et al. and Lee et al.

Claims 10-13 have been finally rejected under 35 U.S.C. § 103 as being obvious over *Rainville-Lonn* in view of *Lee*. (Final Office Action, dated September 27, 2007). Independent claim 10 includes an absorbent article that resists permanent creasing, even after having been packaged in a double or tri-folded configuration. The references cited do not disclose an absorbent article that is resistant to creasing, even after having been subjected to the pressure of a folding machine (approximately 2800 psi).

Rainville-Lonn teaches the use of an absorbent article with a raised peripheral wall, which is elevated to prevent the absorbent layer in the concavity of the absorbent pad from coming into contact with skin of the person (p. 1, ¶ 008). *Rainville-Lonn* does

not teach or suggest the use of a packaging component with the use of an absorbent article. Moreover, there is nothing in *Rainville-Lonn* that would suggest to one of skill in the art that the disclosed pad would withstand the creasing when subjected to the pressure recited by the claimed invention. Indeed, there is no teaching about the material to be used in the outer contour rib. Without knowing what material is being used in this outer rib, it is impossible for the Appellants, or anyone skilled in the art, to be enabled by *Rainville-Lonn* to practice the recited features of the claimed invention. Moreover, there is nothing to suggest that when folded, the disclosed article of *Rainville-Lonn* would not form a permanent crease under recited pressure variables. This is especially true because the pad disclosed uses conventional absorbent materials, such as high-absorption polyester. (p. 2, ¶ 0019). Accordingly, one of skill in the art would not have folded the disclosed pad into an individual packaging and expected it to resist permanent creasing, as does the absorbent article of the present invention. Therefore, in view of the current amendments, the test data discussed below, and the foregoing remarks, Appellants respectfully request the Board to reverse the instant rejection.

C. Appellants test data shows that it would not have been obvious to combine the teachings of Mason and Rainville-Lonn with Lee et al.

Appellants provide test data that describes absorbent articles used in the crease resistant tests and their results. (p. 11, l. 21 – p. 18, l. 10). The results of the crease testing show that conventional products remain folded, even after release from the folded condition and have angles that are less than 90°. (page 18, ll. 3-6). The examples of the claimed invention, however, create angles that are greater than 90°, effectively resisting creasing after being subjected to 2800 psi of applied pressure. (page 18, ll. 6-10). Therefore, one of ordinary skill in the art would not expect a conventionally packaged absorbent article to resist permanent creasing, as does the article of the claimed invention.

Moreover, those articles, such as the articles disclosed by Mason and Rainville-Lonn, would be even more subject to permanent creasing, given the stiffness of the individual articles construction. It would be clear to one of skill in the art that if these

articles were subjected to the claimed pressure, the resistant materials would either permanently crease and/or break.

D. Claims 14 and 16-21 are not obvious in view of Rainville-Lonn, Mason, and Lee

Claims 14 and 16-21 have been finally rejected under 35 U.S.C. § 103 in view of *Rainville-Lonn* and further in view of *Mason* and *Lee*. (Final Office Action dated September 27, 2007). Independent claims 10, 16, and 22 include an absorbent core that is resistant to permanent creasing. As discussed above, none references teaches or suggests, either alone or in combination, that the disclosed articles would withstand the recited pressure tests without forming a permanent crease or breaking.

Specifically, *Lee* teaches a sanitary napkin with a packaging component. Therefore, Appellants respectfully request this rejection be reversed.

E. Claims 15 and 22-24 are not obvious in view of Rainville-Lonn, Mason, Lee and Tanzer

Claims 14 and 16-21 have been finally rejected under 35 U.S.C. § 103 in view of *Rainville-Lonn*, *Mason*, *Lee*, and further in view of *Tanzer*. (Final Office Action dated September 27, 2007). Independent claims 10, 16, and 22 include an absorbent core that resists permanent creasing. *Rainville-Lonn*, *Lee*, and *Mason* do not teach or suggest each and every feature of the recited claims. *Tanzer* does not remedy these deficiencies.

Specifically, *Tanzer* is directed to an absorbent article, such as a diaper, in which the absorbent function is integrated into either the surge material or the outer cover material, thus eliminating the need for a separate central absorbent composite. (col. 2, ll. 34-38). Pockets are formed in either the surge material or the outer cover and superabsorbent fills the pockets. (col. 3, ll. 31). It would not have been obvious to combine *Tanzer* with the multi-layer absorbent articles of *Mason* and *Rainville-Lonn* because it would defeat the purpose of *Tanzer*, to have one single layer in between a cover and baffle layer.

Moreover, *Tanzer* does not teach or suggest the use of an activating member to create independent movement of a folded article from a folded to an unfolded condition or the use of a packaging component with the disclosed article. *Tanzer* does not

disclose a folded article at all, but rather a diaper, presumably not packaged in individual wrappers. Therefore, every teaching of *Tanzer* would have led one of skill in the art away from the claimed invention, not made it obvious in view of it. Even if combined, the references do not teach or suggest each and every element of the claimed invention. Appellants respectfully request this rejection be reversed.

VIII. CONCLUSION

The cited references, either alone or in combination with the Examiner's assertions, do not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is fully patentable over Mason, Lee, Rainville-Lonn, and Tanzer and the Examiner's rejections should be REVERSED.

Respectfully submitted,

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IX. CLAIMS APPENDIX

Claims 1-9. (Cancelled).

10. An absorbent article that resists permanent creasing comprising:
- a packaging component; and
 - an absorbent core comprising an activating member and at least first and second portions each defining a body side surface, wherein said absorbent article is independently movable from a folded condition, wherein said body side surfaces of said first and second portions face each other in a substantially parallel relationship under an applied pressure applied to said first and second portions, to an unfolded condition, wherein no pressure is applied to said first and second portions;
 - wherein said body-side surfaces of said first and second portions form at least one angle greater than or equal to about 90° in said unfolded condition when said absorbent core is positioned and maintained in said folded condition under 2800 psi of said applied pressure for about 5 seconds at 21°C and then is released to said unfolded condition for about 20 seconds; and
 - wherein said absorbent core, when subjected to said folded condition and released to said unfolded condition, resists permanent creasing.
11. The absorbent article of claim 10, wherein said angle is greater than 110°.
12. The absorbent article of claim 10, wherein said angle is greater than 130°.
13. The absorbent article of claim 10, wherein said absorbent core further comprises a third portion having a body-side surface, said body-side surfaces of said first and third portions being folded to face the body-side surface of said second portion.
14. The absorbent article of claim 10, wherein said activating member is defined by a body-side absorbent layer and said absorbent core further includes a garment side absorbent layer;
 - wherein said body-side absorbent layer comprises foam and said garment side absorbent layer comprises a superabsorbent material.

15. The absorbent article of claim 14, wherein said body-side absorbent layer comprises an open celled foam.

16. A thin folded absorbent article resistant to permanent creasing comprising:
a packaging component; and
an absorbent core being independently movable between a folded and an unfolded condition and having a thickness of no more than 8 mm when in said unfolded condition, said absorbent core comprising:

an activating member comprising foam; and
a layer comprising superabsorbent;

wherein the absorbent core has at least a first portion with a body-side surface and a second portion with a body-side surface, said body-side surfaces facing one another when said absorbent article is in said folded condition, and

wherein when said absorbent core is moved from said folded condition to said unfolded condition, said body-side surfaces of said first and second portions form at least one angle greater than 90°; and

wherein said absorbent core, when subjected to said folded condition, and released to said unfolded condition, resists permanent creasing.

17. The thin folded absorbent article of claim 16, wherein the absorbent core, when unfolded, has a thickness of less than 5 mm.

18. The thin folded absorbent article of claim 16, wherein the absorbent core, when unfolded after about 20 seconds, has a thickness of less than 4 mm.

19. The thin folded absorbent article of claim 16, wherein the angle is greater than 110°.

20. The thin folded absorbent article of claim 16, wherein the angle is greater than 130°.

21. The thin folded absorbent article of claim 16, wherein the absorbent article further includes a third portion having a body-side surface, said body-side surfaces of

said first and third portions being folded to face the body-side surface of said second portion.

22. A thin folded absorbent article resistant to permanent creasing comprising:
a packaging component; and
an absorbent core being independently movable between a folded and an unfolded condition and having a thickness of no more than 8 mm when in said unfolded condition, said absorbent core comprising:
a first absorbent layer comprising an activating member; and
a second absorbent layer;
wherein the absorbent core has at least a first portion with a body-side surface and a second portion with a body-side surface, said body-side surfaces facing one another when said absorbent article is in said folded condition, and
wherein when said absorbent core is moved from said folded condition to said unfolded condition, said body-side surfaces of said first and second portions form at least one angle greater than 90° when said absorbent article is positioned in said folded condition under 2800 psi of said applied pressure for 5 seconds at 21°C and then is released to said unfolded condition for about 20 seconds; and
wherein said absorbent core, when subjected to said folded condition, and released to said unfolded condition, resists permanent creasing.

23. The thin folded absorbent article of claim 22, wherein the activating member comprises an open celled foam.

24. The thin folded absorbent article of claim 22, wherein the second absorbent layer is comprised of superabsorbent.

Claims 25-35. (Cancelled).

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.